

**IN THE COURT OF APPEALS OF OHIO  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

BRANDON D. WATSON,

Defendant-Appellant.

**CASE NO. 2026-L-0002**

Criminal Appeal from the  
Court of Common Pleas

Trial Court No. 2024 CR 001135

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**OPINION AND JUDGMENT ENTRY**

Decided: September 21, 2026  
Judgment: Affirmed; remanded

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*Charles E. Coulson*, Lake County Prosecutor, and *Jennifer A. McGee*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

*Brian A. Smith*, Brian A. Smith Law Firm, L.L.C., 123 South Miller Road, Suite 250, Fairlawn, OH 44333 (For Defendant-Appellant).

MATT LYNCH, P.J.

{¶1} Appellant, Brandon D. Watson, appeals the judgment of the Lake County Court of Common Pleas that sentenced him, after he pleaded guilty, to an indefinite prison term of four to six years for trafficking in cocaine and a concurrent twelve-month prison term for aggravated trafficking in drugs. Watson challenges his sentence as contrary to law, his counsel's failure to file an affidavit of indigency as ineffective assistance of counsel, and the trial court's amended nunc pro tunc sentencing entry that attempted to correct a clerical error after Watson filed the instant appeal. After a careful consideration of Watson's arguments, the record, and the pertinent law, we affirm the judgment of the

Lake County Court of Common Pleas. However, the trial court's attempt to correct a clerical error in the original sentencing entry by issuing a nunc pro tunc amended sentencing entry after Watson filed his appeal is void and a nullity. Therefore, we remand for the trial court to issue a new nunc pro tunc sentencing entry correcting Watson's sentence to reflect the sentence that was imposed at the sentencing hearing.

{¶2} In September 2024, Watson was charged by secret indictment with eight counts: Count 1, trafficking in cocaine, a fourth-degree felony, in violation of R.C. 2925.03(A)(1); Count 2, possession of cocaine, a fourth-degree felony, in violation of R.C. 2925.11(A); Count 3, trafficking in cocaine, a second-degree felony, in violation of R.C. 2925.03(A)(1); Count 4, possession of cocaine, a fourth-degree felony, in violation of R.C. 2925.11(A); Count 5, trafficking in cocaine, a first-degree felony, in violation of R.C. 2925.03(A)(1); Count 6, possession of cocaine, a first-degree felony, in violation of R.C. 2925.11(A); Count 7, aggravated trafficking in drugs, a fourth-degree felony, in violation of R.C. 2925.03(A)(1); and Count 8, aggravated possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11(A).

{¶3} In April 2025, Watson pleaded guilty to Count 3, trafficking in cocaine, and Count 7, aggravated trafficking in drugs. The State recited the facts for the record, reflecting that in January 2024, Watson sold cocaine and methamphetamine to a confidential informant on two separate occasions. After engaging Watson in a Crim.R. 11(C)(2) colloquy on his constitutional and nonconstitutional rights, the court accepted Watson's oral and written pleas, dismissed the remaining counts on the State's motion, and set the matter for a presentence investigation ("PSI") and sentencing hearing.

{¶4} In November 2025, the court held a sentencing hearing. The State reviewed that Watson absconded from the first June 2025 sentencing hearing while

counsel was in conference with the court. Watson was arrested several months later on the court's warrant. Defense counsel asked the court to consider Watson's assistance with law enforcement officers since pleading guilty. Watson expressed his remorse and explained he fled from the first hearing because he was scared. The colloquy between Watson and the court continued, in relevant part:

[The Court:] You know you're going to have some more, and I'm still going to give you some credit for – I like to be fairly transparent. Before the information I got to help you with your sentence, I'll just say it that way, I was thinking six to nine years, that's where I was starting at, okay? And they got in here with a recommendation for a minimum of two to three years. So that's how much good work that he did for you at the time.

[Watson:] Thank you, sir.

[The Court:] And so now I'm thinking, okay, well, who are you, which person are you. Are you the person who wants to face the consequences and become a better man, or are you that person who wants to, you know, be a drug dealer and run around and skip bond and those kinds of things.

{¶5} The State acknowledged the work Watson performed with law enforcement but withdrew its recommendation of a minimum sentence of two to three years because Watson absconded during the initial sentencing hearing. The State reviewed Watson's extensive criminal history, which included active traffic and misdemeanor warrants, as well as his criminal convictions for misconduct on public transportation, carrying a concealed weapon, burglary, trespass in a habitation, and permitting drug abuse, among other possession and drug abuse offenses. The State also reviewed Watson's juvenile record, noting Watson had multiple probation violations, as well as adjudications for assault, aggravated disorderly conduct, criminal damaging, and criminal trespass. Ultimately, the State did not recommend a sentence beyond retracting the original recommendation and requesting additional time.

{¶6} Before issuing its sentence, the court reviewed that it had considered the record, the oral statements, the PSI report and drug and alcohol evaluation, conferences in chambers with counsel, as well as the statements of Watson, defense counsel, and the State. The court also stated it had reviewed the principles and purposes of felony sentencing stated in R.C. 2929.11, and the seriousness and recidivism factors set forth in R.C. 2929.12. The court found none of the seriousness factors applied. With respect to recidivism, the court found there were as many as 12 active warrants out for Watson's arrest, he has a prior history of juvenile adjudications and adult criminal convictions, and he failed to respond favorably to sanctions in the past. The court noted a prison term was mandatory on Count 3, trafficking in cocaine, and stated, "So again, I'm going to give you credit for what you did, but I can't strictly go by the prior joint rec based on the fact that you did abscond, and that just wouldn't set a good example for anyone in the future, so there has to be some sort of ramification." On that count, the court imposed an indefinite prison term of a minimum of four years up to a maximum of six years. On Count 7, aggravated trafficking in drugs, the court imposed a concurrent prison term of 12 months. The court also found there is a mandatory minimum fine of \$7,500 for trafficking in cocaine. In the following colloquy, defense counsel and the court discussed waiver of the mandatory fine:

[Defense Counsel:] Your Honor, would it be possible to waive the fines and court costs?

[The Court:] Well, it's a mandatory fine. I can't –

[Defense Counsel:] It's a mandatory fine.

[The Court:] I can't waive that. The only thing you could do is file an Affidavit of Indigency, but then I still have to impose it, but I would consider waiving it at that point in time.

[Defense Counsel:] Thank you. Would the Court consider waiving the court costs at least?

[The Court:] We don't do that here.

[Defense Counsel:] You don't do that?

[The Court:] No. . . .

{¶7} The sentencing entry, filed several days later, erroneously stated “[t]hat the Defendant serve an indefinite prison term of a minimum of four (4) years up to a maximum of six (6) years in prison on Count 3 and *ten (12) months* in prison on Count 7, to be served concurrent to each other. . . .” (Emphasis added.)

{¶8} On December 9, 2025, the trial court issued a nunc pro tunc “amended judgment entry of sentence” in an attempt to correct Watson’s sentence. However, the court erroneously amended the judgment entry to state “[t]hat the Defendant serve an indefinite prison term of a minimum of four (4) years up to a maximum of six (6) years in prison on Count 3 and *ten (10) months* in prison on Count 7, to be served concurrent to each other. . . .” (Emphasis added.)

{¶9} On January 2, 2026, Watson filed a pro se motion for leave to file a delayed appeal, which this court granted on the same day. On April 20, 2026, Watson filed a motion for leave to file an amended appeal to include the trial court’s December 9, 2025 nunc pro tunc entry in his notice of appeal, which this court granted.

{¶10} On May 5, 2026, the trial court filed a second nunc pro tunc “amended judgment entry of sentence,” correcting Watson’s sentence to state “[t]hat the Defendant serve an indefinite prison term of a minimum of four (4) years up to a maximum of six (6) years in prison on Count 3 and *twelve (12) months* in prison on Count 7, to be served concurrent to each other. . . .” (Emphasis in italics added.) On May 18, 2026, Watson

filed a motion for leave to file an amended notice of appeal to include that entry, which this court also granted.

{¶11} Watson raises three assignments of error for our review:

{¶12} “[1.] The trial court’s sentence of Appellant was contrary to law, where the trial court impermissibly considered Appellant’s failure to return to the prior sentencing hearing on June 30, 2025 as an aggravating factor in sentencing, in violation of Appellant’s right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 16 of the Ohio Constitution.

{¶13} “[2.] The failure of Appellant’s trial counsel to file an Affidavit of Indigency, seeking waiver of the mandatory fine imposed on Appellant, constituted ineffective assistance of counsel, in violation of Appellant’s right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶14} “[3.] The trial court’s sentence of Appellant, pursuant to May 5, 2026 Amended Judgment Entry of Sentence, was contrary to law and a violation of Appellant’s right to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Ohio Constitution, where the trial court had already entered a final judgment of sentencing and conviction of Appellant.”

### **Felony Sentence**

{¶15} In his first assignment of error, Watson contends his sentence is contrary to law because the trial court improperly considered the fact that he absconded from the first sentencing hearing as an aggravating factor in violation of his due process rights under the constitutions of the United States and the State of Ohio.

{¶16} The standard of review for felony sentences is governed by R.C. 2953.08(G)(2). *State v. Marcum*, 2016-Ohio-1002, ¶ 16. Pursuant to R.C. 2953.08(G)(2):

The court hearing an appeal under division (A), (B), or (C) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court.

The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court's standard of review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division if it clearly and convincingly finds either of the following:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶17} “Clear and convincing evidence is that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Marcum* at ¶ 22, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶18} Because Watson did not object at the sentencing hearing, we review for plain error. The Supreme Court of Ohio has recognized, “‘otherwise contrary law’ means ‘in violation of statute or legal regulations at a given time.’” *State v. Bryant*, 2022-Ohio-1878, ¶ 22, quoting *State v. Jones*, 2020-Ohio-6729, ¶ 34, quoting *Black’s Law Dictionary* (6th Ed. 1990). Thus, a sentence that is contrary to law rises to the level of plain error. See, e.g., *State v. Aikens*, 2016-Ohio-2795, ¶ 65 (11th Dist.) (failure to make findings required by R.C. 2929.14(C)(4) before imposing consecutive sentences on multiple

offenses is contrary to law and constitutes plain error); *State v. Efford*, 2023-Ohio-3360, ¶ 18 (8th Dist.) (“It is well settled that a sentence that is contrary to law is plain error and an appellate court may review it for plain error.”). *Accord State v. Schmidt*, 2026-Ohio-1913, ¶ 12 (11th Dist.).

{¶19} Our jurisdiction to review the sentencing factors is limited under R.C. 2953.08(G)(2)(b). *State v. Brunson*, 2022-Ohio-4299, ¶ 69. “Under that provision, the appellate court cannot modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12.” *Id.*, citing *State v. Jones*, 2020-Ohio-6729, ¶ 39. “Nothing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.” *Jones* at ¶ 42.

{¶20} “When sentencing, a ‘trial court is not required to give any particular weight or emphasis to a given set of circumstances; it is merely required to consider the statutory factors in exercising its discretion.’ *State v. Delmanzo*, 2008-Ohio-5856, ¶ 23 (11th Dist.). A sentencing court fulfills its duty when it states that it has considered the factors under R.C. 2929.11 and R.C. 2929.12. *State v. DeLuca*, 2021-Ohio-1007, ¶ 18 (11th Dist.).” *State v. Hackathorn*, 2023-Ohio-410, ¶ 8 (11th Dist.).

{¶21} Before imposing Watson’s sentence for trafficking in cocaine, a second-degree felony, the trial court stated it considered the principles and purposes of R.C. 2929.11 and the factors set forth in R.C. 2929.12, and although it was not required to, made explicit findings on the record. The trial court did not simply sentence Watson to a longer sentence because he absconded; rather, this was simply another fact in its consideration, along with Watson’s extensive juvenile and adult criminal record, his large

number of active warrants due to his failure to appear in various courts for various charges, and his failure to respond positively to prior criminal sanctions. Watson has a repeated pattern of behavior of failing to appear, which includes absconding from sentencing in the instant matter, and committing new offenses after criminal sanctions are imposed, all of which indicates a higher rate of recidivism. R.C. 2929.12(D) expressly permits a sentencing court to consider, in addition to the listed factors, “any other relevant factors” pertaining to recidivism. See e.g., *State v. Hull*, 2017-Ohio-157, ¶ 25-27 (11th Dist.) (trial court was free to consider the fact that the appellant absconded and failed to appear at sentencing in finding recidivism more likely).

{¶22} Fundamentally, Watson’s sentence is within the lower statutory range permitted for a second-degree felony, the trial court explicitly stated it considered R.C. 2929.11 and 2929.12, and the trial court was permitted to consider the fact that Watson absconded. There is nothing to indicate that his sentence is otherwise contrary to law.

{¶23} Accordingly, Watson’s first assignment of error is not well taken.

### **Affidavit of Indigency**

{¶24} In his second assignment of error, Watson contends his counsel failed to file an affidavit of indigency, he did not understand the procedure to do so, and he did not know the fine was mandatory. Watson contends this ineffective assistance of counsel resulted in severe prejudice because there is a reasonable probability the trial court would have waived the fine, and he is now facing a great financial hardship while serving a term in prison.

{¶25} To establish a claim of ineffective assistance of counsel, an appellant must demonstrate (1) his counsel was deficient in some aspect of his representation and (2) there is a reasonable probability that, were it not for counsel’s errors, the result of the

proceedings would have been different. *State v. Murray*, 2023-Ohio-3762, ¶ 16 (11th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

{¶26} “The failure to file an affidavit attesting to a defendant’s indigency establishes ineffective assistance of counsel when the record shows a reasonable probability that the trial court would have found the defendant indigent.” *Id.* at ¶ 17.

{¶27} “We review the imposition of costs and financial sanctions under R.C. 2953.08(A)(4) and (G)(2)(b).” *Id.* at ¶ 18, citing *State v. Fulton*, 2019-Ohio-2509, ¶ 39 (11th Dist.). “An appellate court may not modify a financial sanction imposed unless it finds by clear and convincing evidence that the sanction is not supported by the record or is contrary to law.” *Id.*

{¶28} Pursuant to R.C. 2929.18(B)(1), “For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.”

{¶29} “Thus, under Ohio law, a trial court must impose a mandatory fine unless (1) the offender files an affidavit of indigency prior to sentencing, and (2) ‘the trial court finds that the offender is an indigent person and is unable to pay the mandatory fines.’” *Murray*, 2023-Ohio-3762, at ¶ 20 (11th Dist.), quoting *State v. Gipson*, 80 Ohio St.3d 626,

634 (1998). In making its indigency determination, the court must consider both the offender's present and future ability to pay the fine. R.C. 2929.19(B)(5).

{¶30} Since Watson was convicted of trafficking in cocaine, a second-degree felony, the trial court was required to impose a fine of at least \$7,500 but not more \$15,000. See R.C. 2929.18(A)(3)(b) and (B)(1). The trial court imposed the lowest amount, \$7,500.

{¶31} We are unable to find counsel's failure to file an affidavit of indigency was ineffective assistance of counsel because our review of the record does not reveal a reasonable probability the trial court would have found Watson indigent had defense counsel done so. Nor does Watson point to anything in the record that supports a finding of indigency and/or his inability to pay in the present (besides serving a term of imprisonment) or in the future upon his release. The PSI revealed that Watson has no physical or mental disability. He has a general equivalency diploma ("GED") and has been steadily employed since 2017. At the time of the PSI, Watson was working full time as a laborer earning \$18 per hour, and he is the owner of a towing company, earning \$800 weekly. His monthly income is \$3,500, and his monthly social security income is \$425 (for a total of \$3,995). His monthly obligations total \$1,707.

{¶32} Nor does the fact that Watson was appointed counsel at various times in this case lend support to his argument. "[T]here is an important distinction to be made between indigency as it relates to a defendant's constitutional right to counsel and proof of indigency required to avoid a mandatory statutory fine." *State v. Grissom*, 2002-Ohio-5154, ¶ 34 (11th Dist.). "[A] trial court has wide latitude to determine whether an offender is, in fact, indigent, including how likely the possibility of the offender obtaining employment in future. Therefore, the trial court may have found [the appellant] indigent

at the present and, therefore, unable to obtain counsel in order to file a timely appeal and yet found him not indigent regarding his ability to pay a mandatory fine in the future.” *Id.* at ¶ 35, citing *Gipson*, 80 Ohio St.3d at 635. In the instant matter, there is nothing to indicate that Watson does not, at the very least, have a future ability to pay the fine.

{¶33} Lastly, although Watson contends his counsel was unaware of the mandatory fine, both Watson and his counsel were informed of the mandatory fine, which Watson acknowledged orally and in writing at the plea hearing. Further, Watson was present for his counsel's inquiry at the sentencing hearing when the court indicated it would allow him a second opportunity to file an affidavit.

{¶34} Since there is not a reasonable probability the trial court would have found Watson indigent under these circumstances, we cannot say counsel's failure to file an affidavit of indigency was ineffective assistance of counsel.

{¶35} Accordingly, Watson's second assignment of error is not well taken.

### **Nunc Pro Tunc**

{¶36} In his third assignment of error, Watson contends the trial court's May 5, 2026 nunc pro tunc amended sentencing entry renders his sentence contrary to law and is a violation of his due process rights under the constitutions of the United States and the State of Ohio.

{¶37} “[A] trial court lacks the authority to reconsider its own valid, final judgment in a criminal case, with two exceptions: (1) when a void sentence has been imposed and (2) when the judgment contains a clerical error.” *State v. Miller*, 2010-Ohio-5705, ¶ 14, citing *State ex rel. Cruzado v. Zaleski*, 2006-Ohio-5795, ¶ 19, citing Crim.R. 36.

{¶38} Crim.R. 36 permits the trial court to correct “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or

omission . . . at any time.” “The purpose of a nunc pro tunc order is to have the judgment of the court reflect its true action.” *State v. Payne*, 2020-Ohio-161, ¶ 26 (11th Dist.). “The power of the trial court to enter a judgment nunc pro tunc ‘does not extend beyond the power to make the journal entry speak the truth’ and can only be implemented to correct clerical errors.” *Id.*, quoting *State v. Armstrong*, 2017-Ohio-8801, ¶ 19 (11th Dist.). “It is not made to show what the court might or should have decided, or intended to decide, but what it actually did decide.” *Id.*, quoting *Armstrong* at ¶ 19.

{¶39} The trial court issued two nunc pro tunc amended sentencing entries to correct the clerical error in Watson’s sentence for Count 7, aggravated trafficking in drugs. Thus, the court properly used a nunc pro tunc order to correct the entry to accurately reflect what transpired at the sentencing hearing. *See Payne* at ¶ 27.

{¶40} The issue in this case is not whether the trial court could enter a nunc pro tunc amended sentencing entry to correct a clerical error, but whether it did so while it had jurisdiction. “[O]nce an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.”” *State v. Aarons*, 2021-Ohio-3671, ¶ 20 (8th Dist.), quoting *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 2011-Ohio-626, ¶ 13, quoting *State ex rel. Rock v. School Emps. Retirement Bd.*, 2002-Ohio-3957, ¶ 8. “[G]enerally, the timely filing of a notice of appeal precludes a trial court from issuing further orders affecting matters at issue in the appeal. Where a trial court enters an order without jurisdiction, its order is void and a nullity.” *Id.* at ¶ 20, citing *State v. Williamson*, 2014-Ohio-3909, ¶ 18 (8th Dist.), citing *State v. Abboud*, 2006-Ohio-6587, ¶ 13 (8th Dist.). *Accord State v. Lewis*, 2025-Ohio-2454, ¶ 97 (8th Dist.).

{¶41} Thus, the May 5, 2026 nunc pro tunc amended sentencing entry that Watson contends is contrary to law is void and a nullity because it was issued after Watson filed his notice of appeal and the court was acting without jurisdiction. The trial court did have jurisdiction when it issued the December 9, 2025 nunc pro tunc amended sentencing entry because Watson did not file his delayed appeal until January 2026; however, that entry only exacerbated the clerical error. Thus, we are left with a nunc pro tunc amended sentencing entry that still contains a clerical error.

{¶42} Accordingly, we must remand this matter for the trial court to issue a new sentencing entry reflecting the sentence it imposed during the sentencing hearing, i.e., “That the Defendant serve an indefinite prison term of a minimum four (4) years up to a maximum of six (6) years in prison on Count 3 and *twelve (12) months* on Count 7, to be served concurrent to each other.”

{¶43} Watson’s third assignment of error is not well taken.

{¶44} The judgment of the Lake County Court of Common Pleas is affirmed, and the instant matter is remanded for the trial court to issue a new sentencing entry in accordance with the foregoing opinion.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.

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## JUDGMENT ENTRY

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For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed, and the instant matter is remanded for the trial court to issue a new sentencing entry in accordance with the foregoing opinion.

Appellant's pending motion is dismissed as moot.

Costs to be taxed against appellant.

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PRESIDING JUDGE MATT LYNCH

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JUDGE EUGENE A. LUCCI,  
concur

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JUDGE ROBERT J. PATTON,  
concur

**THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY**

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.